

AGENDA ITEM XII-C

Consideration of the review and re-adoption of Section 17.1 through 17.42 in accordance with Texas Government Code, Section 2001.039, concerning Campus Planning, and simultaneously proposing the repeal of Sections 17.1 through 17.42 and proposing new Sections 17.1 through 17.114 of Board rules.

RECOMMENDATION:

1. Review and re-adopt Sections 17.1 through 17.42 of Board rules, in accordance with Texas Government Code, Section 2001.039.
2. Propose the repeal of Sections 17.1 through 17.42 of Board rules, concerning Campus Planning.
3. Propose new Sections 17.1 through 17.114 of Board rules concerning, Campus Planning.

Summary:

Texas Government Code 2001.039 requires that all state agency rules be reviewed not later than the fourth anniversary of the date on which they became effective. The Board's rule review schedule has been placed on file with the *Texas Register*, and it calls for a review of Chapter 17 at the April 2004 Board meeting. Consequently, the review and proposed re-adoption of the rules were posted in the *Texas Register* on February 20, 2004.

The Board is charged with certain oversight responsibilities regarding campus facilities development and improvement by Texas public institutions of higher education, as provided in Texas Education Code, Chapter 61 (relating to the Texas Higher Education Coordinating Board).

HB 2425 and SB 1371, 78th Legislature, authorized higher education institutions to enter into energy saving performance contracts and requires the Board to develop rules for the approval of these projects. During the summer and fall of 2003, appointed Working Groups recommended changes in the rules to accommodate the current facilities development and planning processes on the campuses. For these reasons, staff recommends the repeal of Chapter 17, in its entirety, and the adoption of all new sections.

The reasons for the rules in these sections continue to exist because the Coordinating Board continues to have statutory responsibilities relating to all public institutions of higher education in regard to issues covered by these rules. The staff therefore recommends repeal of the existing rules and adoption of new Sections 17.1 through 17.114 of Board rules concerning Campus Planning.

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The Committee on Campus Planning reviewed the draft rules at its meeting on April 2nd. The recommended changes resulting from that review are incorporated into the proposed rules.

The recommended new rules differ from the existing rules in a number of ways:

1. The recommended new Sections 17.1 – 17.3 (General Provisions) define the purpose of the rules. There is no change recommended from the current rules. It also defines the application of these rules to all public general academic institutions, Texas State Technical Colleges, Lamar State Colleges, and health-related institutions as defined in Section 61, 058, Texas Education Code, except community colleges. The authority for this title is stated, and these rules establish and enforce standards to assure the efficient use of construction funds, and provide for the orderly development of physical plants to accommodate projected college student enrollments. There is no change recommended from the current rules. Section 17.3 (Definitions) adds new definitions, and the language has been edited for consistency. The current rules contain 13 definitions; the proposed rules would provide definitions for 56 terms and phrases used in the proposed rules. The expansion of definitions will clarify the intent of common phrases to ensure continuity of their application.
2. Sections 17.10 – 17.14 (Board Approval) provides definition of those projects requiring Board approval and adds Energy Savings Performance Contract projects. This section clarifies that gifts of unimproved real property do not require Board consideration. This section also outlines the process for notification in the event that a facilities development project not approved by the Board has been developed by the institution. Section 17.11 clarifies that gifts of unimproved real property are exempt from Board approval. There are no other changes recommended from the current rules. Section 17.12 (Delegation of Approval Authority) provides for the delegation of approval authority from the Board to the Commissioner and the Committee on Campus Planning. The change in this section clarifies the approval authority for gifts or acquisition of improved real property and provides for approval of emergency requests. Section 17.13 (Approval Considerations) outlines the factors the Board or its delegates shall consider for campus development projects. There is no change recommended from the current rules, except that it requires verification that the project complies with energy efficiency requirements and consideration of Energy Savings Performance Contract as a viable alternative. Section 17.14 (Re-approval Required) clarifies that re-approval consideration is required when changes in the project cause increases in cost or square footage or funding sources. It also clarifies that re-approval consideration is required if contracts or property purchases are not consummated within the specified time frames.

3. Sections 17.20 – 17.22 (Rules Applying to All Projects) outlines the criteria for project approval. There are no recommended changes from the current rules regarding the criteria for approval of projects or the application procedures. Section 17.22 (Emergency Requests) is a new section providing that the Commissioner or the Committee on Campus Planning may act upon requests of an emergency nature between scheduled meetings of the Board. This section clarifies the application process and the criteria for determining if the request is justified. Emergencies would include an unforeseen combination of circumstances that calls for immediate action requires an urgent need for assistance or relief that, if not taken, would result in an unacceptable cost to the state; or, an urgent need for assistance or relief due to a nature disaster; or, an unavoidable circumstance whereby the delay of the project approval would critically impair the institution's function. In addition, this section would require that the president of the institution sign the request and that this authority may not be delegated within the institution.
4. Section 17.30 – 17.31 (Rules Applying to New Construction and Addition Projects) clarifies and defines the institutional and project standards set by the Board for new construction and addition projects. The new section requires that the institution meet standards for deferred maintenance and critical deferred maintenance. This section would also require that projects meet the Board's standards for space need, cost, and efficiency. The proposed change would provide for variances from a single standard for efficiency to accommodate special or mixed-use facilities, office space, and diagnostic support laboratories. In addition, the proposed change would provide for variances in space need to accommodate consideration of future enrollment. The standard for efficiency is changed to require that the project not reduce the existing ratio of NASF to GSF for the building.

The Board guidelines for utilization are not recommended to change; however, the proposed section would apply the guidelines for space utilization only for classroom and/or class laboratory facilities projects. Currently, these guidelines are not applied to facilities development projects.
5. Sections 17.40 – 17.41 (Rules Applying to Repair and Renovation Projects) clarifies and defines the standards set by the Board for repair and renovation projects. The new section requires that the institution meet standards for deferred maintenance and critical deferred maintenance. The proposed change would provide for variances from a single standard for efficiency to accommodate special or mixed-use facilities, office space, and diagnostic support laboratories. In addition, the proposed change would provide for variances in space need to accommodate consideration of future enrollment. The standard for efficiency is changed to require that the project not reduce the existing ratio of NASF to GSF for the building.

The Board guidelines for utilization are not recommended to change; however, the proposed section would apply the guidelines for space utilization only for classroom and/or class laboratory facilities projects. Currently, these guidelines are not applied to facilities development projects.

6. Section 17.50 - 17.52 (Rules Applying to Real Property Acquisition Projects) clarifies and defines the institutional and project standards set by the Board for real property projects. The new section requires that the institution meet standards for deferred maintenance, and critical deferred maintenance, it also requires that projects meet standards for space need and cost. No change from the current rules is proposed regarding requirements for appropriate property appraisal reports estimating the market value of the real property and required appraiser credentials.
7. Section 17.52 (Eminent Domain) would provide that Board approval is required prior to commencement of eminent domain proceedings, that the institution shall provide evidence of efforts made to reach an agreement with the property's owner, and that the institution must report the costs associated with eminent domain proceedings to the Board. This section removes the requirement for the institution to report estimated legal costs in the project application.
8. Section 17.60 (Rules Applying to Auxiliary Enterprise Projects) clarifies and defines the institutional and project standards set by the Board for auxiliary enterprise projects. The new section requires that the project meet the associated standards for similar project types.
9. Section 17.70 - 17.71 (Rules Applying to Intercollegiate Athletic Projects) clarifies and defines the institutional and project standards set by the Board for intercollegiate athletic projects. The new section requires that the project meet the associated standards for similar project types. There is no change proposed regarding the considerations and limitations on projects that support intercollegiate athletics.

The 78th Legislature directed the Board to develop rules to approve Energy Savings Performance Contract projects. Sections 17.80-17.82 (Rules Applying to Energy Savings Performance Contract Projects) provide for Board consideration of all Energy Savings Performance Contract projects and specifies that Energy Savings Performance Contract projects be considered as Repair and Renovation projects. This section identifies the types of renovations that are included in Energy Savings Performance Contract projects.

This proposed section addresses the requirements outlined in Texas Education Code, Section 51.297. The new subchapter requires that applications for Energy Savings Performance Contract projects include specified certifications by a professional engineer licensed in the State of

Texas. Additionally, this section would require that institutions provide a copy of the signed Energy Savings Performance Contract within 30 days of the effective date of the contract.

10. Section 17.90 – 17.91 (Rules Applying to Tuition Revenue Bond Projects) clarifies and defines the institutional and project standards set by the Board for Tuition Revenue Bond projects. The new section requires that the institution and the project meet the associated standards for similar project types. This section also requires that the Board continue its practice of notifying the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Legislative Budget Board of the results of the evaluation for projects that do not meet the specified Board standards.
11. Section 17.100 – 17.100 (Reports) clarifies that the Board develop and publish reports concerning deferred maintenance and replacement value calculations, construction costs, and space planning models to estimate the assignable E&G space needed institutions of higher education. This section clarifies the periodic review and use of these reports. Section 17.101 (Institutional Reports) provides that institutions of higher education submit periodic reports to the Board related to its facilities inventory, facilities development efforts, accumulated deferred maintenance, project status and tracking, and other reports required by the Board. A new provision in this section would require the institutions to annually report any facilities development or renovation projects approved by the institution's governing board that add E&G space to the institution's facilities inventory. This section clarifies the periodic review and use of these reports.
12. Section 17.110 – 17.114 (Facilities Audit) is a new section that complies with Texas Education Code, Section 61.0583, requiring comprehensive facilities audits. This section defines the requirement that the Board conduct periodic comprehensive audits of all education and general facilities on the campuses of public institutions of higher education to verify the accuracy of institutional facilities inventories and approved facilities development projects. This section provides that the Board may contract with a recognized accounting firm to conduct the audit and that institutions may request assistance from the Board to conduct these audits.

Section 17.111 (Facilities Audit Objectives) defines the objectives for the audit that would include verification of the accuracy of institutional reporting, institutional control systems, compliance with Board rules, verification of appropriate approvals for facilities projects, and whether the projects have been completed as approved.

Section 17.112 (Data Sources) outlines the minimum data sources the Board will use in the course of the facilities audit. These data sources include reports to the Board made by the institution, Board reports for space need and utilization, facilities inventory reports, deferred maintenance and

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replacement value calculation reports, facilities condition assessments, applicable contracts, and governing board approvals.

Section 17.113 (Institutional Audit Cycle) requires that the Board establish the frequency and scope of institutional facilities assessments. This section provides that each institution be reviewed a minimum of once each five years, beginning in September 2005, and that the Board publish a schedule of assessments no later than August 15 of each year, beginning in August of 2005, for the succeeding fiscal year. This section also provides for a comprehensive assessment to determine if circumstances warrant a substantial audit by an independent auditing firm.

Section 17.114 (On-Site Audit) specifies that, should the determination be made that an on-site audit be required or requested, costs incurred in performing such audits be reimbursed to the Board by the institution. This section also requires that a copy of the resulting audit report be provided to the institution, the applicable university system, the State Auditor, the Legislative Budget Board.

Impact (including fiscal): There is no anticipated fiscal impact.

Advisory Committee Statement: There is no advisory committee that was involved in the drafting of these rules.

Legal Consideration:

Approved by the Office of General Counsel: _____ Date: _____